

INEXCO OIL CO.

IBLA 85-559

Decided September 15, 1986

Appeal from decision of the California State Office, Bureau of Land Management, cancelling oil and gas lease CA 9746.

Affirmed.

1. Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

Where an over-the-counter lease offer is defective as filed, the offer receives no priority until the defect is cured.

2. Res Judicata -- Rules of Practice: Appeals: Failure to Appeal

Where appellant failed to appeal from a 1982 Departmental decision establishing the date of priority of its noncompetitive oil and gas lease offer and acquiesced in the 1982 decision until 1985, it may not reopen the 1982 decision for the reason that it had failed to understand the consequence of the decision could be adverse.

APPEARANCES: Stephen F. Noser, Esq., Houston, Texas, for appellant;
Stephen L. Ricker, Esq., Houston, Texas, for Terra Resources, Inc.;
D. Warren Hoff, Jr., Houston, Texas, for Shell Western E&P, Inc.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Inexco Oil Company (Inexco) appeals from a decision issued by the California State Office, Bureau of Land Management (BLM), dated April 11, 1985, which cancelled part of Inexco's oil and gas lease, CA 9746, because sec. 25, T. 15 S., R. 16 E., San Bernardino Meridian, included in CA 9746, was also included in oil and gas lease CA 9919, issued effective June 1, 1982, as a result of a prior offer filed May 15, 1981. The BLM decision states that noncompetitive oil and gas lease CA 9746 was issued effective June 1, 1982, resulting from an Inexco offer filed May 22, 1981. Inexco contends, however, that it filed its over-the-counter offer for this property on May 11, not on May 22, 1981, as BLM found.

It does appear that a noncompetitive over-the-counter oil and gas lease offer including sec. 25 was filed by Inexco on May 11, 1981. However, it also appears Inexco failed to include with the May 11 filing either a statement of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or to refer to a statement on file with BLM as provided in 43 CFR 3102.2-1 (1981). On May 22, 1981, appellant submitted a letter to BLM stating that its corporate qualification statement was on file with the Colorado State Office, BLM, under file C 3431, and appellant's oil and gas lease offers were given priority from that date. On May 15, 1981, however, a conflicting oil and gas offer was filed by Robert G. Lynn for some of the same land described in appellant's offer including sec. 25. As this junior offer was complete on the day it was filed with BLM, its priority attached on the date filed, and a lease to Lynn was issued for sec. 25, effective on June 1, 1982.

Inexco now contends BLM erroneously determined that noncompetitive lease offer CA 9746 was filed on May 22, 1981, and that the language of Information Memorandum No. 82-297 (Mar. 8, 1981), indicates that the failure to place its qualification number on its application for lease was inconsequential, and that BLM should not have given its application a later date (upon filing of the May 22 letter) but should have considered the offer complete on May 11, the date of the original filing. Inexco also argues that it was improper to cancel part of lease CA 9746 after it had issued in accordance with the final decision to lease on May 27, 1982, and also that reconsideration of this determination to lease after over 2 years have passed is improper.

Terra Resources, Inc. (Terra), and Shell Western E&P, Inc. (SWEPI), have appeared in this appeal to oppose Inexco's claim of priority to lease sec. 25. Terra and SWEPI hold interests in lease CA 9919 which derive from the conflicting lease issued to Robert G. Lynn. As SWEPI explains in its brief:

Lease CA-9919 (the lease issued to Terra) was signed on May 10, 1982, on behalf of the federal government and dated effective June 1, 1982. Shell Oil Company was assigned a 50% record title interest in this lease, including the disputed tract, by an assignment executed on behalf of Terra Resources, Inc., on September 7, 1982, and filed with the BLM January 31, 1983. By instrument filed December 12, 1983, Shell Oil Company conveyed to SWEPI 100% of its 50% interest.

(SWEPI Brief at 2). Both Terra and SWEPI claim to be bona fide purchasers entitled to the protection of 30 U.S.C. § 184(h)(2) (1982) and implementing regulations, insofar as their interests in lease CA 9919 are concerned. For reasons discussed below, these arguments advanced by Terra and SWEPI are not reached by the Board.

[1] Curiously, none of the briefs filed by the three corporations mentions Inexco Oil Co., 74 IBLA 260 (1983), a virtually identical case which involves other California State Office over-the-counter oil and gas lease offers filed on May 11, 1981. The logic of the prior Inexco decision is of controlling effect here. As the Board explained in Inexco:

Where a noncompetitive over-the-counter lease offer is incomplete because of the failure of the offeror to comply with the regulations, no priority attaches. However, where the offeror provides the missing information before rejection of the defective offer, an effective filing occurs, and priority attaches as of the date of receipt of the curative information. Peter D. Van Der Jagt, 65 IBLA 56 (1982); Leon F. Scully, Jr., 50 IBLA 19 (1980). ^{1/}

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) [1982]; Frandy, Inc., 69 IBLA 26 (1982); Impel Energy Corp., 64 IBLA 92 (1982). Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of its corporate qualifications as required by 43 CFR 3102.2-5 (effective June 16, 1980, published in the Federal Register, May 23, 1980, 45 FR 35163), or a reference to a serial number where the evidence has earlier been submitted to BLM, the offer receives no priority until the defect is cured. Peter D. Van Der Jagt, *supra*.

Id. at 262.

[2] Inexco's arguments overlook not only this prior case precedent, but also ignore the importance of the fact that a BLM decision issued on May 3, 1982, set the date of Inexco's offer to be May 22, 1981, and that no appeal was taken from this decision. The decision specifically gave Inexco notice that an appeal could be taken in accordance with Departmental regulations. Since no appeal was taken, the decision became final (as Inexco argues in a somewhat different context) and the priority date of the filing for lease CA 9746 became final. Inexco now seeks to dismiss this fact as inconsequential, and argues that because a lease was issued to it for the subject property, the decision of May 3, 1982, was favorable and the decision was therefore not subject to appeal. By this argument, Inexco seeks to reopen the question of priority of filing which was decided adversely to it in 1982, while ignoring the controlling precedent of the 1983 Inexco decision quoted above.

The doctrine of administrative finality bars claimants before the Department from reviving issues which were previously decided in circumstances where, as here, an opportunity to appeal from a final determination affecting the claimant's rights was offered, but where the claimant failed to take a timely appeal. See Ida Mae Rose, 73 IBLA 97 (1983). Similarly ineffective is Inexco's present attempt to recharacterize its prior claim which was allowed to lapse so as to avoid the bar imposed by administrative finality. (See, e.g., Village of South Naknek, 85 IBLA 74 (1985), where an appeal was rejected because it was a recharacterization of a prior appeal which had been unsuccessful.) In the case of an over-the-counter offer, as

^{1/} Cf. Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984), holding that while defective over-the-counter offers may be cured prior to adjudication, no such action is possible after rejection of the offer by BLM takes place.

was observed in Inexco at page 262, the order of priority is of paramount importance. If, in 1982, Inexco was of the opinion that the May 3 decision which established a May 22, 1981, priority for its offer was in error, it was incumbent upon the company to make a timely appeal. It was so informed. Since it did not appeal that determination, it cannot now do so.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

Wm. Philip Horton
Chief Administrative Judge

